IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.265/2001

Smt. Yvonne Maria D'Souza,
alias Smt. Yvonne Fernandes,
Gaunsa Vaddo, Siolim, Bardez, Goa. ..... Petitioner.

V/s.

1. State of Goa, through its
Secretary (Education),
Secretariat, Panaji, Goa.

2. Director of Eduction,
Government of Goa,
18th June Road, Panaji, Goa.

3. The Principal, Dr. Ambedkar
Higher Secondary School,
Colvale, Bardez, Goa.

4. Shri Rajan Naik,
Dr. Ambedkar Higher Secondary
School, Colvale, Bardez, Goa.

5. The Chairman, Managing Committee,
Dr. Ambedkar Higher Secondary School,
Colvale, Bardez, Goa. ..... Respondents.

Mr. J. Godinho, Advocate for the petitioner.

Mr. S. Vahidulla, Addl. Govt. Advocate for respondents No.1 and 2.

Mr. A. Kansar, Advocate for respondents No.3 and 5.

Mr. V. A. Lawande, Advocate for respondent No.4.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

Date of reserving the Judgment :
29th March, 2006.

Date of pronouncing the Judgment :
5th April, 2006.

J U D G M E N T : (Per A.P. LAVANDE, J.)

By this petition under Article 226 of the Constitution of India, the petitioner seeks writ of certiorari to quash and set aside the Orders dated 5.6.1996, 22.5.2000 and 19.3.2001 and further a writ of mandamus directing the respondents No.1, 2, 3 and 5 to implement the order of reinstatement dated 10.4.2000. The petition further seeks direction against the said respondents to reinstate the petitioner with full back wages from 10.6.1996.

2. Briefly, the facts which are relevant for the disposal of this petition are as under :

On 24.7.1993, the petitioner was appointed as Full Time Grade I Teacher for the vocational course of Office Management in the scale of 2640-60-2750-75-2900 by Nath Pai Memorial Eduction Society in Dr. Ambedkar Higher Secondary School, Colvale, Bardez, Goa. The said appointment was temporary for a period of one year only. Thereafter, on 5.6.1995, the petitioner was reappointed as Grade I Teacher (Full Time) for the vocational course of Office Management on the salary of Rs.1700/- per month, again on temporary basis for a

period of one year. On 5.6.1996, pursuant to the application, the petitioner was again appointed as a Double Part Time Vocational Teacher on fixed pay of Rs.2000/- per month with effect from 10.6.96. The appointment was again purely temporary for the academic year 1996-97. The petitioner was again appointed for the academic years 1997-98, 1998-99 and 1999-2000 as Double Part Time Teacher on fixed monthly salary of Rs.2000/-. On 22.5.2000, the Management issued an order relieving the petitioner and other two teachers from their services from 22.4.2000. In the said order, it was stated that the said teachers could apply if they wish to be considered for the said posts for the academic year 2000-01 and that they would be given priority while filling up the posts. However, prior to issuance of the said relieving order, the petitioner vide representation dated 12.1.2000 had represented against the appointment of the petitioner as Double Part Time Teacher and sought a direction against the Management to pay all the arrears due and payable to her. There was an inquiry pursuant to the said representation and by communication dated 10.4.2000 addressed to the Principal of the Higher Secondary School, the Dy. Director of Education (Voc.) directed the Principal to reinstate the petitioner as Full Time Teacher with effect from 10.6.1996 and further directed the Management to pay the petitioner's all arrears of pay and allowances in the pay scale of 1640-2900. The Principal of the Higher Secondary School made a representation to the Dy. Director of Education bringing

to his notice that the petitioner was not terminated, but she was appointed as Double Part Time Teacher with effect from 1996. Thereafter, the very same Dy. Director of Education, vide communication dated 19.3.2001 addressed to the petitioner, informed the petitioner that her request to reinstate her as Full Time Teacher could not be considered since she had raised the objection after four years and since her claim was belated. By the said communication, the petitioner was advised to take recourse to Section 22 of the Goa School Education Rules, 1984 if she had any grievance against his decision. Challenging the action of the Management appointing the petitioner as Double Part Time Teacher as well as the communication dated 19.3.01, the present petition has been filed.

3. The stand of the respondents No.3 and 5 as disclosed in the Affidavit filed by Mr. Vinayak Naik is that the appointments of teachers for vocational courses was to be done every year as directed by the Director of Education vide Communication dated 15.5.1995 addressed to the Principal of the School. The said communication also discloses that the appointment of the staff and the teachers for the said courses was to be upto the end of a particular academic year and that too on temporary basis, without claiming any further extension, regularization and confirmation. It is further the case of the respondents No.3 and 5 that in terms of the directions issued by the Director (Education), all the

appointments have been made on yearly basis and the petitioner was appointed as Double Part Time Teacher from 1996. Since the petitioner got married in February, 1995 and since her newly born child was suffering from peculiar type of sickness, the petitioner was on maternity leave from 9th December, 1995 to 7th March, 1996 and her absence was causing a considerable loss to the students who were to appear for the Board Examination and it was at her request that she was appointed as Double Part Time Teacher which was accepted by the petitioner without any protest, not only for the academic year 1996-97 but till the end of academic year 1999-2000. It is further the case of the respondents No.3 and 5 that in 2000, the petitioner did not apply and therefore, there is no question of considering her for appointment from the academic year 2000. According to the respondents No.3 and 5, the petitioner was not terminated from 1996, but, on the contrary, without any protest she worked as Double Part Time Teacher from 1996 till 2000.

4. Respondent No.2, Director of Education has also filed affidavit opposing the petition. It is the case of the respondent No.2 that the petition is not maintainable since the petitioner has alternate remedy under Section 22 of the Goa School Education Act, 1984. The petitioner having filed an education appeal before the Administrative Tribunal bearing No.57/01 along with an application for condonation of delay and the petitioner having withdrawn the said appeal, the present

petition is not maintainable. It is the case of respondent No.2 that there is neither any termination nor demotion of the petitioner and since the appointment of the petitioner was purely temporary without any claim of confirmation, extension and regularization as envisaged by the Vocational Education Scheme, the petitioner is not entitled to the reliefs prayed for. Further, it is the case of respondent No.2 that the petition is barred by gross delay and laches and on this count also the petition is liable to be dismissed.

5. We have heard Mr. Godinho, learned Counsel on behalf of the petitioner, Mr. Vahidulla, learned Addl. Govt. Advocate for respondents No.1 and 2, Mr. Kansar, learned Counsel for respondents No.3 and 5 and Mr. Lawande, learned Counsel for respondent No.4.

6. Mr. Godinho, learned Counsel for the petitioner submitted that since the petitioner was appointed as Full Time Teacher in the year 1993, the appointment of the petitioner as Double Part Time Teacher from 1996 amounts to termination of the petitioner and, therefore, the petitioner is entitled to the reliefs sought for. The learned Counsel further submitted that the Dy. Director of Education (Voc.) having directed reinstatement with full back wages by Communication dated 10.4.2000, the very same Dy. Director had no jurisdiction to issue the Communication dated 19.3.2001 thereby setting aside the earlier

decision taken in favour of the petitioner. He further submitted that the petitioner could not react prior to the year 2000 against the illegal action of the management, terminating the services of the petitioner as Full Time Teacher and appointing her as Double Part Time Teacher inasmuch as she was apprehensive that she would lose her job and that she was forced to accept the appointment as Double Part Time Teacher and, therefore, the laches would not be fatal in the present case. He further submitted that the action of the respondents in appointing the petitioner as Double Part Time Teacher from the year 1996 is patently illegal since three was a clear vacancy and, as such, there was no question of terminating her as Full Time Teacher and appointing her as Double Part Time Teacher. Since there was a clear vacancy, the petitioner was entitled to be continued as Full Time Teacher even from 1996 and the action of the respondents in terminating her services is apparently contrary to law. In support of his submissions, the learned Counsel relied upon the Judgments of the Apex Court in ***Rattanlal and ors etc. etc. v. State of Haryana and ors.,*** AIR 1987 SC 478, and ***Karnataka State Private College Stop-Gap Lecturer's Association v. State of Karnataka and ors.,*** AIR 1992 SC 677. The learned Counsel, relying upon Rule 97 of the Goa School Education Rules, 1986 submitted that the penalty of reduction in rank could not have been imposed on the petitioner except after receipt of the approval of the Director of Education.

7. Mr. Vehidulla, learned Addl. Govt. Advocate appearing on behalf of respondents No.1 and 2 submitted that the petitioner having not reacted against the appointment as Double Part Time Teacher for the academic years 1996-2000 is not entitled to any relief since the petitioner is guilty of gross, unexplained laches. He further submitted that the petitioner is not entitled to the writ of mandamus sought for since the petitioner has not been able to establish that there has been any failure on the part of the Dy. Director to discharge the statutory obligation. In support of his submissions, the learned Counsel relied upon the Judgments of the Apex Court in ***Hope Textiles Ltd., and another v. Union of India and ors.,*** 1995 Supp.(3) SCC 199 and ***Union of India and ors. v. C. Krishna Reddy.,*** (2003) 12 SCC 627.

8. Mr. Kansar, learned Counsel for the respondents No.3 an 5 submitted that the petitioner is guilty of gross unexplained laches and, therefore, the petition is liable to be dismissed on this ground only. He further submitted that the petitioner was appointed as Double Part Time Teacher from 1996 to 2000 pursuant to her applications made every year and since the petitioner did not apply in the year 2000, there was no question of terminating her services by the management. According to the learned Counsel, the petitioner is not entitled to the reliefs sought for.

9. Mr. Lawande, learned Counsel appearing on behalf of respondent No.4 submitted that the petition is guilty of gross laches and since the petition has been filed almost after a period of five years from the date of alleged cause of action, the petition is liable to be rejected on this ground only. In support of his submission, he relied upon the Judgment of the Apex Court in ***P.S. Sadasivaswamy v. State of Tamil Nadu.,*** (1975) 1 SCC 152. He further submitted that the Dy. Director was well within his right to review his earlier order since the order passed by him was an administrative order and, there was no bar for the Dy. Director to review his own order.

10. We have considered the submissions made by the learned Counsel for the parties. Indisputably, the petitioner was appointed as Double Part Time Teacher from 1996 till 2000. It is only in the year 2000, the petitioner reacted against her appointment as Double Part Time Teacher and claimed that she was entitled to be appointed as Full Time Teacher from the year 1996 onwards. It is not disputed that all the teachers in the Higher Secondary School in the Vocational Courses have been appointed on year-to-year basis, without any claim for extension, regularization and confirmation in terms of the Scheme by which the vocational courses were introduced. Therefore, we are unable to accept the submission of the petitioner that the appointment of the petitioner has to be taken as a regular appointment from 1993 onwards

and that she is entitled to be treated as a regular teacher with all the benefits of a Full Time Teacher. Moreover, the petitioner herself accepted her appointment as a Double Part Time Teacher from 1996. We find it difficult to believe the version of the petitioner that she accepted the post of Double Part Time Teacher from 1996 since she was apprehensive of losing her job. If at all the petitioner had any grievance as Double Part Time Teacher in the year 1996, it was expected of the petitioner to react against her appointment as Double Part Time Teacher. Therefore, we find considerable merit in the submission made by the learned Counsel for the respondents that the petition is guilty of gross, unexplained laches and on this Count only the petition is liable to be rejected.

11. Even on merits, we are unable to accept the submissions made by the learned Counsel for the petitioner. As per communication dated 15.5.1995 of the Director of Education, the appointment of the teachers in vocational courses had to be purely on temporary basis without any right to claim, extension, regularization or confirmation and the appointing authority had to seek approval of the Department for continuation of the staff for each academic year with sufficient enrolment in each of the course every year. It is pertinent to note that there is no challenge thrown by the petitioner to the decision of the Government as conveyed vide communication dated 15.5.1995 by the Director of Education. That being the position, we do not find any merit

in the submission of Mr. Godinho that the action of the management in not appointing the petitioner as Full Time Teacher from 1996, is illegal. The reliance placed by the learned Counsel on Rule 97 of the Goa School Education Rules is misplaced inasmuch as the petitioner was not appointed as Double Part Time Teacher by way of disciplinary action initiated against her. Similarly, the reliance placed on behalf of the petitioner in the Judgments of the Apex Court in ***Rattanlal and ors etc. etc. v. State of Haryana and ors. (supra)*** and ***Karnataka State Private College Stop-Gap Lecturer's Association v. State of Karnataka and ors.(supra)*** is also misplaced having regard to the nature of the controversy involved in the present case. It is to be noted that the petitioner did not even apply for the post after the year 2000 in terms of the relieving order issued to her.

12. In so far as writ of mandamus in respect of implementation of the order dated 10.4.2000 issued by the Dy. Director of Education is concerned, we find considerable merit in the submission made on behalf of the respondents. It is well settled by catena of decisions of the Apex Court that writ of mandamus can be granted only in case where there is a statutory duty imposed upon the concerned authority and there is a failure on the part of that authority to discharge the statutory obligation. In order that a mandamus may issue to compel the authority to do something, it must be shown that there is a statute

which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. In the present case, the petitioner has not been able to establish that there was a statutory duty imposed on the Dy. Director of Education and there is a failure on his part to discharge that obligation. Similarly, the petitioner has not been able to establish that she has a legal right to be appointed as Full Time Teacher in the school from the year 1996. Therefore, in our opinion, the petitioner is not entitled to the relief of mandamus sought for in respect of the order passed by the Dy. Director who has not even been joined as party respondent in the present petition. Since the petition has been already admitted, we are not inclined to consider whether the petitioner has any alternate remedy against the orders passed by the Management.

13. In view of the above, we do not find any merit in this writ petition. Hence, the petition is dismissed and the Rule is discharged. Having regard to the facts and circumstances of the case, parties are left to bear their own costs.

A.P. LAVANDE, J.

N.A. BRITTO, J.

ssm.